

A Dato' Seri Anwar Ibrahim v Tun Dr Mahathir bin Mohamad

FEDERAL COURT (PUTRAJAYA) — CIVIL APPLICATION NO
08(F)-319 OF 2009(W)
B ARIFIN ZAKARIA CJ (MALAYA), JAMES FOONG FCJ AND
SURIYADI JCA
24 NOVEMBER 2010

C *Civil Procedure — Appeal — Appeal to Federal Court — Application for leave to
appeal — Whether point of law raised by appellant in leave application akin to
raising preliminary objection — Whether grounds of judgments of courts below
which were in English language null and void for contravening provisions of
art 152 of the Federal Constitution and s 8 of the National Language Acts 1963/67*

D *Civil Procedure — Appeal — Appeal to Federal Court — Pleadings — Issues not
pleaded — Whether appellant at liberty to raise issue not pleaded in affidavit in
support of leave application*

E *Words and Phrases — 'Proceedings' — Meaning of — Whether 'proceedings' could
be interpreted to include 'grounds of judgment' — Whether there is distinction
between 'judgment' and 'grounds of judgment' — National Language Acts 1963/67
s 8*

F Dato' Seri Anwar bin Ibrahim, the appellant, commenced an action against
Tun Dr Mahathir bin Mohamad, the respondent, for alleged defamation.
When this defamation suit was struck out by the High Court the appellant
G appealed to the Court of Appeal, but his appeal was dismissed with costs. This
was the appellant's application for leave to appeal against the decision of the
Court of Appeal, which had, inter alia, held that the failure of the appellant to
file a memorandum of appeal in the national language rendered the purported
record of appeal filed by the appellant useless and incurably defective. At the
H commencement of the hearing of the leave application the appellant sought the
court's leave to raise for the first time a point of law which would dispose of the
application. The point of law raised was whether the grounds of judgments of
the Court of Appeal and that of the High Court, which were in the English
language, were null and void having regard to the provisions of art 152 of the
I Federal Constitution ('Constitution') read together with s 8 of the National
Language Acts 1963/67 ('the NLA'). The respondent objected to the
application on the grounds that the appellant was seeking to do an act that was
akin to raising a preliminary objection to his own application, which was a
leave application under s 96(a) of the Courts of Judicature Act 1964. The

respondent contended that a preliminary objection was normally raised by the opponent on a technical or jurisdictional ground and that the appellant could not as a matter of practice raise a preliminary objection against his own application. The respondent further submitted that in the alternative the preliminary objection should not be entertained since the appellant's affidavit in support of his application did not raise this point or issue. The appellant argued that since the grounds of judgment formed part of the court proceedings and s 8 of the NLA required all 'proceedings' to be in the national language then all the proceedings thus far before the court including the instant application were a nullity, being in breach of a mandatory requirement, and it followed that a rehearing had to be ordered. The appellant further submitted that this issue as a point of law could be raised at any stage of the proceedings, with or without notice. The sole issue for consideration in this leave application was whether the three grounds of judgment delivered by the courts below, which were all in the English language, were rendered null and void for contravening the provisions of s 8 of the NLA.

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Held, dismissing the application and striking out the notice of motion with costs:

- (1) The point of law raised by the appellant was an issue which warranted consideration because of the serious consequences that may follow if it were to be correct (see para 7).
- (2) Central to the argument of the appellant was a consideration of whether the word 'proceedings' in s 8 of the NLA included the 'grounds of judgment' of the court. The definition of the word 'proceeding' includes amongst others the institution or commencement of action, judgment, execution and the taking of an appeal or writ of error. Although 'judgment' is included in the definition, what is in issue is whether 'judgment' includes 'grounds of judgment' or 'reasons for judgment'. It is settled law that there is a clear distinction between 'judgment' and the term 'grounds of judgment' or 'reasons for judgment' and because of this distinction, the word 'proceedings' could not be interpreted to include 'grounds of judgment', as contended by the appellant (see paras 11, 14 & 17).
- (3) In the event that the term 'proceedings' were to include 'grounds of judgment' then it would become necessary to consider the proviso to s 8 of the NLA. This proviso gives a wide discretion to the court as regards the use of the national language and the English language in any proceeding having regard to the interest of justice. According to the records the parties in the instant case had asked for leave of court, both in the High Court and the Court of Appeal, to conduct proceedings in the English language and leave was granted by the courts. Therefore, the judges of the High Court and the Court of Appeal delivered their

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- A grounds of judgment in the English language. Since what transpired in the High Court and the Court of Appeal was clearly within the proviso of s 8 of the NLA, it was not open to the appellant at this stage to complain, concerning the use of the English language. Thus, in the present case it was not contrary to art 152 of the Constitution and s 8 of the NLA for the grounds of judgment to be in the English language (see paras 17, 19–21 & 24).

[Bahasa Malaysia summary]

- C Dato' Seri Anwar bin Ibrahim, perayu, telah memulakan tindakan terhadap Tun Dr Mahathir bin Mohamad, responden, kerana dakwaan fitnah. Apabila guaman fitnah ini dibatalkan oleh Mahkamah Tinggi perayu telah merayu ke Mahkamah Rayuan, tetapi rayuan ini telah ditolak dengan kos. Ini adalah permohonan perayu untuk kebenaran merayu terhadap keputusan Mahkamah Rayuan, yang antara lain memutuskan bahawa kegagalan perayu memfailkan memorandum rayuan dalam bahasa kebangsaan telah menyebabkan rekod rayuan tersebut yang difailkan oleh perayu tidak berguna dan defektif yang tidak boleh diperbetulkan. Semasa perbicaraan untuk kebenaran permohonan bermula perayu memohon kebenaran mahkamah untuk menimbulkan buat pertama kali poin undang-undang yang boleh membuang permohonan itu.
- E Poin undang-undang yang ditimbulkan adalah sama ada alasan-alasan penghakiman-penghakiman Mahkamah Rayuan dan juga Mahkamah Tinggi, yang dalam bahasa Inggeris, terbatal dan tidak sah menurut peruntukan-peruntukan perkara 152 Perlembagaan Persekutuan ('Perlembagaan') dibaca bersama s 8 Akta Bahasa Kebangsaan 1963/67 ('ABK').
- F Responden telah membantah permohonan itu atas alasan bahawa perayu memohon untuk melakukan tindakan yang sama dengan menimbulkan bantahan awal terhadap permohonannya sendiri, iaitu permohonan kebenaran di bawah s 96(a) Akta Mahkamah Kehakiman 1964. Responden telah menegaskan bahawa bantahan awal biasanya tidak ditimbulkan oleh pihak lawan atas alasan teknikal atau berhubung bidang kuasa dan bahawa perayu tidak boleh mengikut amalan biasa menimbulkan bantahan awal terhadap permohonannya sendiri. Responden selanjutnya berhujah bahawa secara alternatif bantahan awal itu tidak patut dilayan kerana affidavit sokongan permohonannya tidak menimbulkan perkara atau isu ini.
- H Perayu berhujah bahawa memandangkan alasan-alasan penghakiman membentuk sebahagian daripada prosiding mahkamah dan s 8 ABK menghendaki semua 'proceedings' dalam bahasa kebangsaan maka semua prosiding yang dihadapkan ke mahkamah termasuklah permohonan ini adalah terbatal, kerana melanggar keperluan mandatori, dan diikuti bahawa perbicaraan semula patut diperintahkan. Selanjutnya perayu berhujah bahawa isu ini sebagai poin undang-undang boleh ditimbulkan pada mana-mana peringkat prosiding, dengan atau tanpa notis. Satu-satunya isu untuk dipertimbangkan dalam permohonan kebenaran ini adalah sama ada tiga alasan penghakiman yang disampaikan oleh mahkamah bawahan, yang

kesemuanya dalam bahasa Inggeris adalah terbatal dan tidak sah kerana bercanggah dengan peruntukan s 8 ABK. A

Diputuskan, menolak permohonan dan membatalkan notis usul dengan kos:

- (1) Poin undang-undang yang ditimbulkan oleh perayu merupakan isu yang wajar dipertimbangkan kerana akibat serius yang mungkin berlaku jika ia suatu yang betul (lihat perenggan 7). B
- (2) Hujah penting perayu adalah pertimbangan tentang sama ada perkataan 'proceedings' dalam s 8 ABK termasuklah 'grounds of judgment' mahkamah. Tafsiran perkataan 'proceedings' termasuklah, antara lain, memulakan tindakan, penghakiman, penyempurnaan dan menerima rayuan atau writ yang silap. Meskipun 'judgment' termasuk dalam tafsiran, apa yang menjadi isu adalah sama ada 'judgment' termasuk 'grounds of judgment' atau 'reasons for judgment'. Adalah undang-undang tetap bahawa terdapat perbezaan nyata antara 'judgment' dan istilah 'grounds of judgment' atau 'reasons for judgment' dan oleh kerana perbezaan ini, perkataan 'proceedings' tidak boleh ditafsirkan termasuk 'grounds of judgment', sebagaimana ditegaskan oleh perayu (lihat perenggan 11, 14 & 17). C
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- (3) Sekiranya istilah 'proceedings' termasuklah 'grounds of judgment' maka adalah perlu untuk menimbangkan proviso kepada s 8 ABK. Proviso ini memperuntukkan budi bicara yang luas kepada mahkamah berhubung penggunaan bahasa kebangsaan dan bahasa Inggeris dalam apa-apa prosiding demi kepentingan keadilan. Menurut rekod pihak-pihak dalam kes ini telah memohon kebenaran mahkamah, kedua-dua Mahkamah Tinggi dan Mahkamah Rayuan, untuk melaksanakan prosiding dalam bahasa Inggeris dan kebenaran itu telah diberikan oleh mahkamah. Oleh itu, hakim-hakim Mahkamah Tinggi dan Mahkamah Rayuan telah menyampaikan alasan-alasan penghakiman mereka dalam bahasa Inggeris. Oleh kerana apa yang berlaku di Mahkamah Tinggi dan Mahkamah Rayuan jelas dalam skop proviso s 8 ABK, ia tidak terbuka kepada perayu di peringkat ini untuk mengadu, berkaitan penggunaan bahasa Inggeris. Oleh itu, kes ini tidak bertentangan perkara 152 Perlembagaan dan s 8 ABK untuk alasan-alasan penghakiman disampaikan dalam bahasa Inggeris (lihat perenggan 17, 19–21, 24).] F
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Notes

For cases on appeal to Federal Court, see 2 *Mallal's Digest* (4th Ed, 2010 Reissue) paras 833–845. I

Cases referred to

Civil Aviation Safety Authority v Central Aviation Pty Ltd (NSD 160 of 2009); [2009] FCAFC 137, FC (refd)

- A *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (sued as the asministratrix of the estate of Bhagwan Singh s/o Sohan Singh, deceased)* [2010] 2 MLJ 479; [2010] 3 CLJ 29, CA (refd)
Lake v Lake [1955] 2 All ER 538, CA (refd)
Lim Geak Liang v East West UMI Insurance Bhd [1997] 3 MLJ 517, FC (refd)
- B *Zainun bte Hj Dahan lwn Rakyat Merchant Bankers Bhd & satu lagi* [1998] 1 MLJ 532; [1997] 4 CLJ Supp 279, HC (refd)

Legislation referred to

- C Courts of Judicature Act 1964 ss 3, 62, 63, 96(a)
Federal Constitution art 152, 152(4), (5)
National Language Act 1967 s 8
National Language Acts 1963/67 s 8
Rules of the Court of Appeal 1994 rr 24, 25
Rules of the Federal Court 1995 r 63
- D Rules of the High Court 1980 O 42, O 44, O 45
Subordinate Courts Rules 1980 O 29, O 30

Appeal from: Civil Appeal No W-02-609 of 2007 (Court of Appeal, Putrajaya)

- E *Karpal Singh (SN Nair with him) (Karpal Singh & Co) for the applicant.*
VK Lingam (R Thayalan and VK Lashmi with him) (VK Lingam & Co) for the respondent.

F **Arifin Zakaria CJ (Malaya):**

THE APPLICATION

- G [1] This is an application for leave to appeal against the decision of the Court of Appeal dismissing the appeal by the applicant against the decision of the learned High Court judge, striking out the applicant's defamation suit against the respondent with costs.
- H [2] At the commencement of the hearing before us, learned counsel for the applicant, Mr Karpal Singh, sought leave of the court to raise for the first time a point of law which, he contended, would dispose of the application. He indicated to us that whatever may be the decision of the court on the point of law, he would not be proceeding further with the application.
- I [3] The point of law raised by learned counsel, is whether the grounds of judgments of the Court of Appeal and that of the High Court, which were in the English language, are null and void, having regard to the provisions of art 152 of the Federal Constitution ('the Constitution') and s 8 of the National Language Acts 1963/67 ('the NLA 1963/67').

[4] Learned counsel for the respondent, Dato' VK Lingam, objected to the application contending that the applicant, is now seeking to depart from the application before the court, which is a leave application under s 96(a) of the Courts of Judicature Act 1964 ('the CJA'). He further contended that, what the applicant seeks to do here is akin to raising a preliminary objection against his own application. He said, preliminary objection, is normally raised by the opponent premised on a technical or jurisdictional ground and the applicant could not as a matter of practice raise a preliminary objection against his own application. In the alternative, he submitted, the preliminary objection should not be entertained by the court as the applicant, through his own affidavit in support of the application, did not at any time, challenge the validity of the grounds of judgments on the premise that they were in the English language.

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[5] As we see it, even though in the course of argument, Mr Karpal, stated that he is raising a 'preliminary objection', it is clear that he was in fact raising an issue/point of law, challenging the validity of the grounds of judgments delivered by the courts below. If the court is with him on this, then, the application before the court could not be proceeded with as the proceedings in the courts below are a nullity. It follows, therefore, that a rehearing has to be ordered.

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[6] The main thrust of his contention is that the grounds of judgment delivered by the court forms part of the court proceedings, and s 8 of the NLA 1963/67 stipulates that all proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any subordinate court shall be in the national language. This, he contended, is a mandatory requirement, breach of which would render the entire proceeding null and void. As a point of law, he contended, a party is free to raise it at any stage of the proceedings with or without notice. For support, he cited the Court of Appeal's judgment in *Harcharan Singh s/o Sohan Singh v Ranjit Kaur d/o S Gean Singh (sued as the administratrix of the estate of Bhagwan Singh s/o Sohan Singh, deceased)* [2010] 2 MLJ 479; [2010] 3 CLJ 29. Even though, the preliminary objection raised in that case goes to the issue of jurisdiction, the decision supports the principle that an issue of law may be raised at any stage of the proceedings with or without notice. The stand taken by the Court of Appeal found support in the case of *Lim Geak Liang v East West UMI Insurance Bhd* [1997] 3 MLJ 517, a decision of the Federal Court, wherein Mohamed Dzaidin FCJ (as he then was) at p 521 stated:

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It is worth noting that this issue was never pleaded and argued in the courts below. At the outset of the proceedings, Cik Zachariah, counsel for the defendant, seized the opportunity by raising an objection that it was not open to the plaintiff to argue on appeal a fresh point not litigated and decided by the courts below. We overruled the objection upon the basis that since the ground of appeal concerned the construction of condition 4 of the policy, it is within our discretion to hear the

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A argument of the parties. For this conclusion, we are guided by the decision of the Federal Court in *Gulwant Singh v Abdul Khalik* [1965] 2 MLJ 55; [1965] 1 LNS 47 (per Thomson LP at p 58 (MLJ)):

B A point which is not raised at the trial and which is raised for the first time in the Court of Appeal must always be most jealously scrutinised (*The Tasmania* (1980) 15 App Cas 223 at p 225). The question of whether effect should be given to such a point is, however, one for discretion (see *Ewa Perkowski v Wellington Corporation* [1959] AC 53 at p 69) and the principles on which that discretion may be exercised have been thus set out in the case of *Connecticut Fire Insurance Company v Kavanagh* [1892] AC 473 at p 480 (per Lord Watson):

C When a question of law is raised for the first time in a court of last resort, upon the construction of a document, or upon facts either admitted or proved beyond controversy, it is not only competent but expedient, in the interests of justice, to entertain the plea.

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THE ISSUE

E [7] In the present case, it is common ground that all the three grounds of judgments delivered by the courts below were in the English language. The issue is whether they contravene the provision of s 8 of the NLA 1963/67, and hence rendering the grounds of judgments, null and void. We are of the view that this is an issue which warrants our consideration because of the serious consequence that may follow should we agree with the applicant.

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[8] For ease of reference, the relevant provision of the Constitution is reproduced below:

G 152 National language.

(1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:

Provided that —

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(a) No person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and

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(b) Nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.

[9] In illustrating his stand, learned counsel for the applicant has drawn the attention of this court to the development of the national language as the

language of the courts. He submitted that, from 1957–1967, the language of the court is governed by art 152(4) and (5) of the Constitution. It reads as follows:

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152(4) Notwithstanding the provisions of Clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court, the Court of Appeal or a High Court shall be in the English language:

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Provided that, if the Court and counsel on both sides agree, evidence taken in language spoken by the witness need not be translated into or recorded in English.

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(5) Notwithstanding the provisions of Clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

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[10] The first enactment on national language was the National Language Act 1963. It came into force on 1 April 1963. There was no provision in the Act as regards the language of the court since the ten year period had not passed. Then, came the National Language Act 1967, which came into force on 1 September 1967. It contains s 8 which makes provision for the language of courts. The National Language Act 1963 and the National Language Act 1967 had since been consolidated and revised as the NLA 1963/67 with effect from 1 July 1971. Section 8 of the NLA 1963/67 reads as follows:

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8 Language of Courts

All proceedings (other than the giving of evidence by a witness) in the Federal Court, the Court of Appeal, the High Court or any Subordinate Court shall be in the national language:

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Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.

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(Emphasis added.)

[11] Central to the argument of counsel for the applicant is the word ‘proceedings’ in s 8 of the NLA 1963/67, which he maintained includes the ‘grounds of judgment’ of the court. He relied on *P Ramanatha Aiyar’s Advanced Law Lexicon* at p 3745 in support of his contention, where the word ‘proceedings’ is stated to mean:

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A 'Proceedings' is a word much used to express the business done in Courts. A proceeding in Court is an act done by the authority or direction of the Court, express or implied. It is more comprehensive than the word 'action', but it may include in its general sense all the steps taken or measures adopted in the prosecution or defence of an action, including the pleadings and judgment. As applied to

B actions, the term 'proceeding' may include — (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of ne exeat; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in the action; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to

C execution, in code practice; (11) the taking of the appeal or writ of error; (12) the remitter, or sending back of the record to the lower Court from the appellate or reviewing Court; (13) the enforcement of the judgment, or a new trial, as may be directed by the Court of last resort. EDWIN E. BRYANT, *The Law of Pleading Under the Codes of Civil Procedure 3–4* (2nd edn. 1899).

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[12] *Black's Law Dictionary*, (7th Ed) at p 1221 defines the word 'proceeding' in the following term:

E 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.

(See also *Stroud's Judicial Dictionary of Words and Phrases*, (7th Ed), Vol 3 at p 1426:

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[13] Section 3 of the Courts of Judicature Act 1964 ('the CJA') defines 'proceeding' as follows:

G 'Proceeding' means any proceeding whatsoever of a civil or criminal nature and includes an application at any stage of a proceeding.

H [14] From the above definitions, we may conclude that 'proceeding' includes amongst others the institution or commencement of action, judgment, execution and the taking of an appeal or writ of error. Therefore, by definition 'judgment' forms part of the proceedings. That we think is not in dispute. What is in issue is whether 'judgment' includes 'grounds of judgment'.

The same *Law Lexicon* at p 2503, defines 'judgment' in the following term:

I 'Judgment' means the statement given by the judge on the grounds of a decree or order. [CPC (5 of 1908), S.2 (9)]. The sentence of the law, or decision pronounced by the Court, upon the matter contained in the record. (3 Comm. 395, c. 24. Tomlin). A judgment in the final determination of the rights of the parties in an action.

A 'judgment' is a sentence of the law pronounced by the Court upon the matter contained in the record (Co.LIYY. 39 A, 168 A); and the decision must be one obtained in an ACTION *Ex p. Chinery* 12 Q.B.D. 342; *Onslow v. Inland Revenue*, 25 QBD.

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[In a proper use of terms the only judgment given by a Court is the order it makes. *The reasons for judgment are not themselves judgments though they may furnish the Court's reason for decision and thus form a precedent*] (*R. v. Ireland* (1970) 44 ALJR 263). See also *Lake v. Lake*, para. (8) *Infra*. (Emphasis added.)

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[15] Thus, it is clear that 'judgment' must be distinguished from 'reasons for judgment' or what we commonly refer to as 'grounds of judgment'. The distinction is made amply clear by Sir Raymond Evershed MR in *Lake v Lake* [1955] 2 All ER 538 at p 538:

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A party's right to appeal (which is, of course, a statutory right) is now regulated by the terms of RSC, ord 58, r 1. That states that the appellant, may, pursuant to s 27(1) of the Supreme Court of Judicature (Consolidation) Act 1925, appeal from 'the whole or any part of any judgment or order'. Counsel for the wife strongly argued that the judgment, for the purpose of the present matter, is not the formal document which I have already read, drawn up and signed by the district registrar, but is the statement of his reasons given by the commissioner at the end of the trial and from the transcript of which I have read certain short extracts. *I will assume that the statement should be construed and read in the light of the questions and answers, which I also read, following the delivery of the so-called judgment, though I must not be taken to be saying that such a dialogue should necessarily be treated as part of the judgment itself. In my view, however, the argument cannot be sustained. Nothing from the cases brought to our attention by counsel for the wife persuades me that by the words 'judgment or order' in the rule or in the subsection is meant anything other than the formal judgment or order which is drawn up and disposes of the proceedings and which, in appropriate cases, the successful party is entitled to enforce or execute. In other words, I think that there is no warrant for the view that there has by statute been conferred any right on an unsuccessful party, even if the wife can be so described, to appeal from some finding or statement — I suppose it would include some expression of view about the law — which you may find in the reasons given by the judge for the conclusion at which he eventually arrives, disposing of the proceeding. If that is right, I come back again to the formal judgment or order; and, for the reasons which I have already made plain, there is no part of that document against which any appeal or, indeed, any complaint, could be made on the part of the wife.* As counsel for the husband observed, the wife raised as a substantive defence, that, if she had committed adultery (though she denied it), then that adultery had been condoned, and in that matter she was successful. Indeed, on her husband's petition she was the successful party at the trial; and it may be said in mitigation of her apparent embarrassment now because of the finding of adultery, that, after all, she did succeed in one of the defences she deliberately put forward and it ill becomes her now to complain of that fact in this or any other court. (Emphasis added.)

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- A [16] The fundamental principle established in *Lake v Lake* [1955] 2 All ER 538 at p 538 is that a party may appeal against the judgment and not against some findings or statements which may be found in the reasoning given by the judge in support of a judgment or order. This is followed in *Civil Aviation Safety Authority v Central Aviation Pty Ltd* (NSD 160 of 2009); [2009] FCAFC 137, a decision of the NSW District Registry of Australia. In that case, Bennet, Flick and Mckerracher JJ held that:

- C The term 'judgment' as it is used in ss 4 and 24 of the 1976 Act has the same meaning as that used in s 73 of the Constitution and refers to the formal order of a court: *Ah Toy v Registrar of Companies* (1985) 10 FCR 280 at p 285. Toohey, Morling and Wilcox JJ there observed:

- D ... [T]he starting point for consideration of the competency of this appeal must be ... s 24 of the Federal Court of Australia Act 1976. Unless there is a 'judgment, decree or order', there is nothing against which an appeal may be brought. ... It is accepted that the expression 'judgment, decree or order' bears the meaning which the word 'all judgments, decree, order ...' have in s 73 of the Constitution: *Molloy v Roy* (1975) 132 CLR 622 per Barwick CJ at p 625. In that case Mason J, speaking of s 46 of the Supreme Court Act (NT), said (at p 639):

- E However, I see no alternative but to give the word 'judgment' as it appears in s 46 its accepted legal meaning, that is, the formal order made by a court which disposes of, or deals with, the proceeding then before it: see *R v Ireland* (1970) 126 CLR 321 at p 330; *Lake v Lake* [1955] P 336 at pp 343–344. Any other view would, I think, disregard the similarity between the provisions of s 46 and those of s 35 of the Judiciary Act 1903 (Cth) which are so obviously based on the provisions of s 73 of the Constitution where the word 'judgments' is used in the same sense.

- G [17] There is, therefore, a clear distinction between 'judgment' and the term, 'grounds of judgment' or 'reasons for judgment'. Similarly, our rules of courts draw such a distinction (see ss 62 and 63 of the CJA, r 63 of the Rules of the Federal Court 1995, rr 24 and 25 of the Rules of the Court of Appeal 1994, O 42, O 44 and O 45 of the Rules of the High Court 1980 and O 29 and O 30 of the Subordinate Courts Rules 1980). In view of the foregoing we are of the view that the word 'proceeding' could not be interpreted to include 'grounds of judgment' as contended by the applicant. This disposes the issue of law raised herein, but even if 'proceedings' were to include 'grounds of judgment', we need to consider further the proviso to s 8 of the NLA 1963/67.

- I [18] The proviso reads as follows:

Provided that the Court may either of its own motion or on the application of any party to any proceedings and after considering the interests of justice in those proceedings, order that the proceedings (other than the giving of evidence by a witness) shall be partly in the national language and partly in the English language.

[19] It would appear that the proviso gives a wide discretion to the court as regard the use of the national language and the English language in any proceedings having regard to the interest of justice. The applicant's counsel, however, submitted that the proviso does not apply to the court, but only to parties to the proceedings. He, however, conceded that based on the proviso a party may be allowed by the court to conduct the proceedings partly in the national language and partly in the English language.

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[20] Quite to the contrary, we are of the view that the proviso gives the court the discretion, either on its own motion or on the application of any party, to order the proceedings to be conducted partly in the national language and partly in English language as the justice of the case demands. From the record it appears that at both levels in the High Court and the Court of Appeal, learned counsel for the applicant and respondent had asked for leave of courts to conduct the proceedings in the English language. Leave was granted by the courts. Therefore, quite understandably the learned judges of the High Court and the Court of Appeal delivered their grounds of judgments in the English language.

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[21] What transpired is clearly within the proviso to s 8 of the NLA 1963/67, alluded to earlier. Therefore, it is not open to the party at this stage to complain, concerning the use of the English language. However, it should be noted that in compliance with the NLA 1963/67, all the cause papers filed in this case, were in the national language.

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[22] Finally, we wish to emphasise that the courts have always recognised the importance of the national language (see *Zainun bte Hj Dahlan lwn Rakyat Merchant Bankers Bhd & satu lagi* [1998] 1 MLJ 532; [1997] 4 CLJ Supp 279).

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[23] And as early as 1990, the Chief Judge of Malaya, Hashim Yeop A Sani in the Chief Judge of Malaya's Circular No 3 of 1990 dated 25 June 1990, directs that all judges and judicial commissioners of the High Court of Malaya and sessions court judges and magistrates to submit to him at least one grounds of judgment in the national language in each month in order to identify the problem arising out of the implementation of the use of the national language in courts. This circular further reinforces our view that, judges indeed have a discretion to deliver his grounds of judgment either in the national language or the English language.

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CONCLUSION

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[24] For the above reasons, we hold that it is not contrary to art 152 of the Constitution and s 8 of the NLA 1963/67 for the grounds of judgment to be in the English language, as in the present case.

A [25] In the result, the point of law raised by learned counsel for the applicant is accordingly dismissed. Since the applicant is not minded to proceed with the leave application, hence, the notice of motion herein is struck out with costs.

B *Application dismissed and notice of motion struck out with costs.*

Reported by Kohila Nesan

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